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Court of Appeals Division II
State of Washington

Opinion Information Sheet

Docket Number: 30263-2-II
Title of Case: City of Bremerton, Respondent v. William and Natacha Sesko, Appellants
File Date: 07/27/2004

SOURCE OF APPEAL

Appeal from Superior Court of Kitsap County
Docket No: 97-2-01749-3
Judgment or order under review
Date filed: 03/28/2003
Judge signing: Hon. Jay B Roof

JUDGES

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CITY OF BREMERTON, a municipal corporation, Respondent,

v.

WILLIAM J. SESKO and NATACHA SESKO, husband and wife and their marital community, Appellants.

No. 30263-2-II

UNPUBLISHED OPINION

HOUGHTON, J. -- William and Natacha Sesko appeal a trial court order enforcing its earlier order that they clear their property of junk and storage items and prohibiting them from storing items or junk on the property. Because collateral estoppel bars this appeal, we affirm.

FACTS

The Seskos own property at 1701 Pennsylvania Avenue in Bremerton (City). The City zoned the area as a 'business park.' Report of Proceedings (January 21, 2003) at 26-27. Although the City does not allow outdoor storage and junkyards in its business park zones, the Seskos filled the property with airplanes, boats, busses, cars, tires, tanks, machine parts, junk piers, wooden pallets, concrete chunks, modular building parts, metal, storage tanks, pontoons, breakwater floats, mattresses, Styrofoam floats, portable buildings, metal objects, metal scraps, wood scraps, and a crane.1 After receiving complaints about surrounding property devaluation, the City initiated an abatement action to clean up the Sesko property. After a hearing, the trial court entered findings of fact on May 8, 1998:

1. The City of Bremerton issued a Cease and Desist Order to William and Natacha Sesko on February 2, 1995, which specified that a land use violation was occurring because the Seskos were conducting an illegal junkyard on their property located at 1701 Pennsylvania Avenue, Bremerton, Kitsap County, Washington.

2. The Seskos appealed the Cease and Desist Order to the City of Bremerton Planning Commission, which upheld the Cease and Desist Order on

April 18, 1995.

3. The Seskos next appealed the City of Bremerton Planning Commission Decision to the Bremerton City Council. On June 28, 1995, the Bremerton City Council upheld the Planning Commission Decision, which found that the Seskos were illegally operating a junkyard on their property, and the operation on the Sesko property was not a nonconforming storage yard.

4. The Seskos appealed the June 28, 1995, Decision of the Bremerton City Council to the Kitsap Superior Court. The Kitsap County court case was dismissed for want of prosecution on December 4, 1996.

5. By virtue of prior administrative proceedings, certain findings have already been determined. It has been determined that the Seskos are operating an illegal junkyard on their property. Prior administrative proceedings determined that the Seskos were not operating a nonconforming storage yard on their property. The Seskos' land use appeal contesting such findings has been dismissed by the Kitsap County Superior Court. The Seskos' failure to proceed in the past action does not provide a defense in the present nuisance action.

. . . .

7. The court finds that the property is a nuisance per se because the Seskos are illegally operating a junkyard on this property without a business license and without authorization under the City of Bremerton's Land Use Code.

8. Conditions on this property also constitute an actual nuisance.

9. Evidence presented to the court provides abundant evidence that the collection of objects on the Sesko property unreasonably interferes with the ability of neighboring property owners to use and enjoy their land. The Seskos' property is covered with old dilapidated vehicles, including boats, buses, and cars, tires, rusty tanks, rusty machine parts, junk piers, wooden pallets, concrete chunks, modular buildings, metal debris, storage tanks, old signs, as well as a building on sled runners, old boats, a rusty barge, storage tanks, pontoons, a rusty breakwater float, mattresses, Styrofoam floats, portable buildings, a crane, rusty metal objects, metal scraps, and wood scraps.

At the trial, neighbors who live in the vicinity of the junkyard, provided compelling testimony that the junkyard unreasonably interferes with their ability to enjoy their properties and is resulting in actual and substantial harm because the property is an excellent habitat for rats and constitutes an attractive nuisance for children in the area. The collection of objects on the site lure children from the area to the site, and the junkyard site provides a dangerous setting for children's play.

There is a well-grounded fear of injury to the City of Bremerton as a result of operating a junkyard on this property. Operating a junkyard on {sic} in this location endangers nearby property owners and poses a threat of irreparable harm to them. The photographic evidence constitutes overwhelming evidence that the collection of objects on the Sesko property diminishes the enjoyment of nearby property owners of their homes. Photographs show that this junkyard has a significant negative impact on the surrounding properties. The testimony of Dan Calnan, an appraiser, established that the junkyard has caused general devaluation of properties in the area, a circumstance which results in substantial injury to property owners living in the area. For the above reasons, the property constitutes an actual nuisance.

10. The only remedy available to the City of Bremerton which will provide relief to the property owners living in the area is the issuance of a mandatory injunction which requires the Seskos to clean up their property by removal of all junk from their land. The Seskos are given 120 days to accomplish a cleanup of this property.

. . . .

The Court will maintain jurisdiction over this case until the cleanup

is accomplished. The Seskos cannot use this property as a storage facility and cannot maintain the collection of objects and structures on the property.

Clerk's Papers (CP) at 115-18.

The court then concluded, 'The City of Bremerton is entitled to a permanent mandatory injunction which requires the Seskos to clean up their property by removing all objects from their property,' and ordered:

1. The City of Bremerton is entitled to a mandatory injunction requiring abatement of the nuisance on the Seskos property located at 1701 Pennsylvania Avenue, Bremerton, Washington.
2. The Seskos shall clean up the property located at 1701 Pennsylvania Avenue, Bremerton, Washington within 120 days, or by September 7, 1998, by removing all objects, structures and materials stored on the property. They shall remove, or cause to be removed, all old airplanes, dilapidated vehicles, including boats, buses, and cars, tires, rusty tanks, rusty machine parts, junk piers, wooden pallets, concrete chunks, modular buildings, metal debris, storage tanks, old signs, the building on sled runners, old boats, a rusty barge, storage tanks, pontoons, rusty breakwater float, mattresses, Styrofoam floats, portable buildings, a crane, rusty metal objects, metal scraps, and wood scraps. All things collected on the property must be removed.
3. The Seskos shall not use this property as a storage facility and cannot store objects of any kind on the property.
4. The City of Bremerton needs to facilitate the cleanup of the property by issuing any necessary permits to authorize removal of the objects from the property.
5. In ordering the Seskos to clean up their property, it is necessary to distinguish between the abatement of the nuisance and the cleanup of toxic contaminants. This order in no way obligates the Seskos to clean up toxic contaminants on the property. The Seskos are not required to eliminate or secure the concrete pit on their property. The Seskos cannot store objects in the concrete pit on their property.
6. This Court will maintain jurisdiction over this case until the cleanup is accomplished.

CP at 118-19, 120-22. We refer to this as order as the 1998 Order.

The Seskos appealed the 1998 Order. Finding no error, we affirmed the ruling. City of Bremerton v. Sesko, 100 Wn. App. 158, 995 P.2d 1257, review denied, 141 Wn.2d 1031 (2000).

After the Seskos failed to comply with the 1998 Order, in January 2002, the City hired a contractor to conduct the abatement. But after the contractor left the site, the City received complaints that the Seskos retrieved articles that they had moved onto neighboring property. And the contractor did not entirely clear the Seskos' property because of uncertainty about the property's waterfront boundary.

On March 28, 2003, the trial court ruled on the City's motion to enforce the 1998 Order and ordered:

1. The Seskos have violated paragraph 3 of the judgment entered on May 8, 1998, by keeping a large assortment of vehicles, equipment, materials, and objects on their property when paragraph 3 specifies that 'the Seskos shall not use this property as a storage facility and cannot store objects of any kind on the property.'
2. The Seskos have neither applied for a permit nor obtained a permit or other permission from the City of Bremerton, which would authorize them to store vehicles, equipment, materials, and objects outdoors on their Pennsylvania Avenue property.
3. The Seskos failed to comply with the court's January 21, 2003 oral order to bring conditions on their property into compliance with

paragraph 3 of the May 8, 1998 injunction.

4. The City of Bremerton is authorized to enter the Seskos' property on Pennsylvania Avenue and to bring conditions on the property into compliance with paragraph 3 of the May 8, 1998 injunction.

Spindle.

The Seskos appeal from this enforcement order (the 2003 Enforcement Order).

ANALYSIS

In response to the Seskos' appeal, the City raises collateral estoppel as a bar. Collateral estoppel prevents endless relitigation of already decided issues. Reninger v. Dep't of Corrections, 134 Wn.2d 437, 449, 951 P.2d 782 (1998). To prevail on collateral estoppel here, the City must establish that identical parties litigated identical issues to a final judgment on the merits and that no injustice results from applying the bar. Reninger, 134 Wn.2d at 449.

The Seskos argue that nonidentical issues and resulting injustice preclude applying a collateral estoppel bar to them. To demonstrate different issues, the Seskos attempt to distinguish between the items on the property when the court entered the 1998 Order and those on the property when the court entered the 2003 Enforcement Order.2 Their argument fails, however, because the court originally ordered that '{t}he Seskos shall not use this property as a storage facility and cannot store objects of any kind on the property.' CP at 121. The 1998 Order's clear language barred then-current and future storage. We affirmed the 1998 Order in Sesko, 100 Wn. App. 158. The 2003 Enforcement Order placed no additional restrictions on the Seskos. Thus, the issues are identical.

The Seskos also assert that applying collateral estoppel works an injustice against them. We addressed this argument in their first appeal. Then, we held that the trial court did not err in applying a collateral estoppel bar because the Seskos received adequate argument opportunities below and that no injustice occurred. Sesko, 100 Wn. App. at 163-64. Because it is the same as the 1998 Order, and because the Seskos had an opportunity to argue in 1998 and the later order only repeats those restrictions, neither order works an injustice against them.3 Collateral estoppel applies, barring their appeal.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Houghton, J.

We concur:

Hunt, J.

Quinn-Brintnall, C.J.

1 William, a patented inventor and former NASA engineering consultant and Keyport Naval Station technical evaluator, used the items stored on his property for his inventions.

2 The Seskos do not dispute that the two orders involved identical parties and resulted in final judgments.

3 The Seskos also argue that collateral estoppel creates a manifest injustice because '{i}t would also effectively insulate from review any

post-judgment order implementing an order of abatement, regardless of the extent to which the order clarifies, modifies or extends the original order and affects the substantial property rights of the property owners.' Appellant's Reply Brief at 24. But because we hold that the orders are identical, the question whether an order that 'clarifies, modifies or extends the original order' may be reviewed is not before us and we decline to address it. For the same reason, we also decline to address the Seskos' argument that the trial court erred in entering a 'post-judgment order' and in not taking their objections or allowing them to call witnesses.

The Seskos finally argue that the court erred in entering the 2003 Enforcement Order without first clarifying their boundary line. They did not raise this issue before the trial court and we decline to address it. Ruddach v. Don Johnston Ford, Inc., 97 Wn.2d 277, 281, 644 P.2d 671 (1982).

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